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**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

BRETT HAYWARD,

Plaintiff,

vs.

TD BANK, N.A.,

Defendant

Case No.:

COMPLAINT AND JURY DEMAND

COMPLAINT

Plaintiff, BRETT HAYWARD (“Plaintiff”), by and through his undersigned counsel, hereby sues Defendant, TD BANK, N.A. (“Defendant”), alleging as follows:

I. INTRODUCTION

1. Plaintiff brings this action on behalf of himself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

2. The TCPA was legislated to prevent companies like TD BANK, N.A. from invading Americans’ privacy by stopping abusive “robo-calls.” The legislative history “described these calls as ‘the scourge of modern civilization, they wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone out of the wall.’ 137 Cong. Rec. 30, 821 (1991). Senator Hollings presumably intended to give telephone subscribers another option: telling the autodialers to simply stop calling.” Osorio v. State Farm Bank, F.S.B., 746 F.3d 1242, 1255-56 (11th Cir. 2014).

II. JURISDICTION AND VENUE

COMPLAINT AND JURY DEMAND

1 3. Jurisdiction of this Court arises under 28 U.S.C. §1331 and 47 U.S.C. § 227(b)(3). See
2 Mims v. Arrow Financial Services, LLC, 565 U.S. 368 (2012) holding that federal and state
3 courts have concurrent jurisdiction over private suits arising under the TCPA.

4 4. Venue is proper in the United States District Court for the District of Maine pursuant to
5 28 U.S.C § 1391(b)(2) because Plaintiff resides within this District and a substantial part of the
6 events or omissions giving rise to the herein claims occurred within this District.

7 5. The violations described in this Complaint occurred in Maine.

8 **III. PARTIES**

9 6. Plaintiff is a natural person residing in Waldo County, in the city of Northport, Maine
10 and is otherwise *sui juris*.

11 7. Defendant is a nationally chartered bank, doing business in the state of Maine, with its
12 principal place of business located in Wilmington, Delaware. Defendant is a “person” as
13 defined by 47 U.S.C. §153 (39).

14 8. At all times relevant to this Complaint, Defendant has acted through its agents,
15 employees, officers, members, directors, heir, successors, assigns, principals, trustees, sureties,
16 subrogees, representatives and insurers.

17 **IV. FACTUAL ALLEGATIONS**

18 9. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged
19 debts incurred through purchases made on credit issued by Defendant.

20 10. Plaintiff is the “called party.” See Breslow v. Wells Fargo Bank, N.A., 755 F.3d 1265
21 (11th Cir. 2014).

22 11. Defendant placed collection calls to Plaintiff’s cellular telephone at phone number (207)
23 XXX-5870.

1 12. Defendant placed collection calls to Plaintiff from various telephone numbers including,
2 but not limited to, (888) 561-8862.

3 13. Upon information and belief, based on the number, frequency and timing of the calls,
4 and on Defendant's prior business practices, Defendant's calls were placed with an automatic
5 telephone dialing system.
6

7 14. Defendant used an "automatic telephone dialing system," as defined by 47 U.S.C. §
8 227(a)(1), to place telephone calls to Plaintiff seeking to collect a consumer debt allegedly owed
9 by Plaintiff.
10

11 15. Defendant's calls were not for emergency purposes, which would be excepted by 47
12 U.S.C. § 227(b)(1)(A).

13 16. Defendant's calls were placed to a telephone number assigned to a cellular telephone
14 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §227(b)(1).
15

16 17. Defendant never received Plaintiff's "prior express consent" to receive calls using an
17 automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone
18 pursuant to 47 U.S.C. § 227(b)(1)(A).

19 18. On or about August 7, 2018, Plaintiff spoke with a representative of Defendant's
20 company at phone number (888) 561-8862, and told Defendant to stop calling his cellular
21 telephone.
22

23 19. During the August 7, 2018 conversation, Plaintiff gave Defendant his full social security
24 number, name, birthdate, and address, in order to assist Defendant in identifying and accessing
25 his accounts before asking Defendant to stop calling his cellular telephone.
26
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1 20. Plaintiff revoked any consent, explicit, implied, or otherwise, to call his cellular
2 telephone and/or to receive Defendant's calls using an automatic telephone dialing system in
3 his conversation with Defendant's representative on August 7, 2018.

4
5 21. Despite Plaintiff's request to cease, Defendant continued to place calls to Plaintiff's
6 cellular phone after August 7, 2018.

7 22. Despite Plaintiff's request that Defendant cease placing automated
8 collection calls to Plaintiff via the use of an automatic telephone dialing system, Defendant
9 continued to place at least forty-five (45) telephone calls via the use of an automatic telephone
10 dialing system to Plaintiff's cellular telephone.

11
12 23. Defendant placed the great number of telephone calls to Plaintiff with the sole intention
13 of harassing Plaintiff in such a manner so as to cause Plaintiff to pay the alleged debt claimed
14 by Defendant, even when Plaintiff admittedly had impaired ability to pay. This telephonic
15 harassment caused Plaintiff considerable anxiety and emotional distress.

16
17 **FIRST CAUSE OF ACTION**

18 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION**

19 **ACT - 47 U.S.C. §227(b)(3)(B)**

20
21 24. Plaintiff repeats and incorporates by reference into this cause of action the allegations
22 set forth above at Paragraphs 1-23.

23
24 25. The foregoing acts and omissions of Defendant constitute numerous and multiple
25 negligent violations of the TCPA, including but not limited to each and every one of the above
26 cited provisions of 47 U.S.C. § 227 *et seq.*

1 26. As a result of Defendant's negligent violations of 47 U.S.C. §227 et seq., Plaintiff is
2 entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to
3 47 U.S.C. § 227(b)(3)(B).

4 27. Plaintiff is also entitled to injunctive relief prohibiting such conduct in the future.

5 WHEREFORE, Plaintiff, BRETT HAYWARD, respectfully requests judgment be entered
6 against Defendant, TD BANK, N.A., as follows:

7 a. Awarding Plaintiff statutory damages of five hundred dollars (\$500.00)
8 multiplied by the number of negligent violations of the TCPA alleged herein, to wit: forty-five
9 (45) for a total of twenty-two thousand five hundred dollars (\$22,500.00);

10 b. Awarding Plaintiff actual damages and compensatory damages according to
11 proof at time of trial;

12 c. Granting Plaintiff such other and further relief as may be just and proper.

13
14 **SECOND CAUSE OF ACTION**

15 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**

16 **CONSUMER PROTECTION ACT**

17 **47 U.S.C. § 227(b)(3)(C)**

18 28. Plaintiff repeats and incorporates by reference into this cause of action the allegations
19 set forth above at Paragraphs 1-23.

20 29. The above listed acts and omissions of Defendant constitute numerous and multiple
21 knowing and/or willful violations of the TCPA, including but not limited to each and every one
22 of the above cited provisions of 47 U.S.C. § 227 et seq.

23 30. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq.,
24 Plaintiff is entitled an award of one thousand five hundred dollars (\$1,500.00) in statutory
25 damages.

1 damages for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §
2 227(b)(3)(C).

3 31. Plaintiff is also entitled to injunctive relief prohibiting such conduct in the future.

4 WHEREFORE, Plaintiff, BRETT HAYWARD, respectfully requests judgment be entered
5 against Defendant, TD BANK, N.A., as follows:
6

7 a. Awarding Plaintiff statutory damages statutory damages of one thousand five
8 hundred dollars (\$1,500.00) multiplied by the number of knowing and/or willful violations of
9 TCPA alleged herein, to wit: forty-five (45) for a total of sixty-seven thousand five hundred
10 dollars (\$67,500.00);
11

12 b. Awarding Plaintiff actual damages and compensatory damages according to
13 proof at time of trial;

14 c. Granting Plaintiff such other and further relief as may be just and proper.
15

16 **JURY TRIAL DEMAND**

17 Plaintiff demands a jury trial on all issues so triable.
18

19 Dated: July 15, 2019
20

21 RESPECTFULLY SUBMITTED,

22
23 By: /s/ Daniel Ruggiero

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